IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARROL DOMAN and JAMES DUBE	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 99-6543
CITY OF PHILADELPHIA et al.	:	
	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J. August 28, 2000

Presently before the Court are the Plaintiffs' Motion for Summary Judgment and the remaining Defendants' Cross-Motion for Summary Judgment. For the reasons stated below, Judgment is to be entered in favor of the Defendants and against the Plaintiffs.

I. BACKGROUND

Plaintiffs Carrol Doman ("Doman") and James Dube ("Dube" and collectively, "Plaintiffs") filed a *pro se* Complaint on December 21, 1999. The essence of this Complaint under 42 U.S.C. § 1983 is that Defendants[1] have violated Plaintiffs' rights under the equal protection and due process clauses of the XIV Amendment.

The Complaint appears to allege that their non-traditional family has been treated in a discriminatory manner. Before the events giving rise to this Complaint occurred, the

1. The remaining Defendants include the City of Philadelphia's Department of Human Services ("DHS") and two DHS employees, social worker Michael Rice and his supervisor, Elizabeth Litvin. The Commonwealth of Pennsylvania Department of Public Welfare was also named in the Complaint, but claims against it were dismissed by an Order dated March 16, 2000.

Plaintiffs lived together with eight children. Three of the children are Ms. Doman's from her first marriage and three are Mr. Dube's from his first marriage. Mr. Dube and Ms. Doman have had two boys together. Therefore, these two boys are the half-brothers of the other six children, all of whom had lived in the same household for approximately three years. On August 9, 1999, the DHS received a Child Protective Services ("CPS") report of suspected child report concerning Dube and two of his children. Defendant Michael Rice investigated the case by interviewing the two children, their biological mother and Plaintiff Dube. During the course of the investigation, Dube admitted that he had engaged in abusive behavior[2]. Rice recommended that Dube undergo parental skills training, but Dube refused to do so. In October of 1999, a Philadelphia Court of Common Pleas ordered that three of Dube's children who lived in Plaintiffs' household be placed with their maternal aunt and uncle. The Court also ordered Dube to undergo parental training and to not reside in the house with the other five children, but allowed Dube liberal visitation privileges. The thrust of the Complaint is that taking the children from Plaintiffs' home and placing them with the biological mother's relatives violated their rights as a non-traditional family and is unfair gender discrimination against Dube. Plaintiffs also complain that Defendants have harassed them to the point of interfering with their ability to remain gainfully employed.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 56(c), the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of

2. Mr. Dube admitted to disciplining two of his daughters by applying a wood block to their buttocks. Mr. Rice believed this discipline to be inappropriate, and labeled it abuse. Mr. Dube disagreed with Mr. Rice's assessment.

law. Gray v. York Newspapers, Inc., 957 F.2d 1070, 1078 (3d Cir.1992). In evaluating a summary judgment motion, the court may examine the pleadings and other material offered by the parties to determine if there is a genuine issue of material fact to be tried. Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). When considering a motion for summary judgment, a court must view all evidence in favor of the non-moving party. See Bixler v. Central Pa. Teamsters Health and Welfare Fund, 12 F.3d 1292, 1297 (3d Cir. 1993).

A movant "bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any which it believes demonstrate the absence of a genuine issue of material fact". Celotex, 477 U.S. at 323. A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). For the dispute over the material fact to be genuine, "the evidence must be such that a reasonable jury could return a verdict in favor of the non-moving party." Id. To successfully challenge a motion for summary judgment, the non-moving party must offer specific facts contradicting the movant's assertion that no genuine issue is in dispute. Kline v. First West Government Securities, 24 F.3d 480, 485 (3d Cir. 1994)

III. DISCUSSION

A. Defendants Rice and Litvin

Accepting as true all of Plaintiffs allegations, it is clear that Mr. Dube, in particular, is not happy with the manner in which his family arrangement has been adjudicated. He also has opinions on how the system could be conducted to reach what he considers better

solutions. However, this action attempts to bring a claim for violation of his civil rights under § 1983. To make out a cause of action under § 1983, a plaintiff must show that (1) the defendants acted under color of law; and (2) their actions deprived him of rights secured by the Constitution or federal statutes. See Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir.1993). As all of the Defendants were either government employees or entities, the Defendants were acting under color of law. Therefore, the real issue is whether Defendants actions deprived Plaintiffs of any federally protected rights.

One way to characterize the Plaintiffs' Complaint is as a substantive due process claim. The Supreme Court has recognized a "fundamental liberty interest of natural parents in the care, custody, and management of their child." Santosky v. Kramer, 455 U.S. 745, 753 (1982). This interest, however, must be balanced against the state's interest in protecting children suspected of being abused. See, Croft v. Westmoreland County Children & Youth Serv., 103 F.3d 1123, 1125 (3d Cir.1997). Defendants Rice and Litvin also had a statutorily mandated duty to investigate the reports of child abuse pursuant to the Child Protective Services Law. See 23 Pa. C.S.A. §§ 6362 & 6368. The Third Circuit has made it clear that when it comes to a social worker's interference with the parent-child relationship, only conduct that is so arbitrary as to shock the conscience may be considered violative of a parent's substantive due process rights. Miller v. City of Philadelphia, 174 F.3d 368, 375-76 (3d Cir. 1999) ("culpability for substantive due process purposes must exceed both negligence and deliberate indifference, and reach a level of gross negligence or arbitrariness that indeed "shocks the conscience.").

The Court does not find any behavior by Defendants Rice and Litvin that shocks the conscience. Mr. Rice made recommendations to DHS and the Court of Common Pleas only

after interviewing Mr. Dube's three daughters and both biological parents. Rice saw pictures that highly suggested physical abuse by Mr. Dube. Plaintiff Dube also admitted that he had disciplined two of his daughters by paddling them with a block of wood. Rice's recommendations that Dube engage in counseling and parental skills classes were refused. Based on all of this information, Rice recommended that Mr. Dube be restricted from the home and that his three daughters be placed elsewhere. In light of the evidence before the Court, this course of action seems reasonable, and certainly does not "shock the conscience". Therefore, Defendant Rice will be granted summary judgment on Plaintiffs' substantive due process claims. As Defendant Litvin is not sufficiently connected to any allegations of wrongdoing, she will likewise be granted summary judgment on all claims.

Plaintiffs' Complaint also attempts to state an equal protection claim based on the fact that Dube's children were removed from the home and placed with relatives of their biological mother. He believes that such a course of conduct by the Defendants is illegal gender discrimination. To bring a successful claim under § 1983 for a denial of equal protection, plaintiffs must prove the existence of purposeful discrimination. Batson v. Kentucky, 476 U.S. 79, 93 (1986). They must demonstrate that they "receiv[ed] different treatment from that received by other individuals similarly situated." Andrews v. City of Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990).

Plaintiffs have first failed to offer any evidence of purposeful discrimination on the part of the Individual Defendants. Even accepting Plaintiffs far from clear allegations that Defendant Rice had a "personal issue" with Dube, that does not suffice to state an equal protection claim. Plaintiffs have failed to show how they, especially Dube, were treated

differently from other parents in similar cases involving custody and allegations of abuse. Merely saying that his ex-wife was favored over him is not gender discrimination actionable under the equal protection clause. Also, there is no evidence in the record that Ms. Nancy's Dube's rights were favored over James Dube's because of his gender, but solid evidence that the children were given to the biological mother's relatives because Mr. Dube posed a potential threat to them. Since Plaintiffs have failed to show that the Individual Defendants purposefully discriminated against them and treated them differently than other similarly situated people, the Plaintiffs claims must be dismissed. As it has previously been determined that the Defendants actions were not so arbitrary as to shock the conscience, all claims against the Individual Defendants will be dismissed.

B. City of Philadelphia DHS

The Plaintiffs have also attempted to state a claim against the City of Philadelphia's DHS. A municipality may be liable under § 1983 only if it can be shown that its employees violated a plaintiff's civil rights as a result of a municipal policy or practice. See Monell v. New York City Department of Social Services, 436 U.S. 658 (1978). The Third Circuit has held that there can be no Monell claim against a municipality when no constitutional violation by an employee has been found. See Williams v. Borough of West Chester, 891 F.2d 458, 467 (3d Cir. 1989); but cf. Fagan v. City of Vineland, 22 F.3d 1283, 1292 (3d Cir. 1994) (holding that a municipality could be liable for an unconstitutional policy concerning police pursuits, even if no individual police officer violated the Constitution). Since, the Court has found that neither individual employee of DHS violated Plaintiffs constitutional rights, there should be no municipal liability for the Philadelphia DHS. However, the Plaintiffs claim against

DHS would fail even if the officers had committed constitutional violations because the Plaintiffs have not sufficiently produced evidence of an unconstitutional policy or practice by the Defendants. Accordingly, all claims against the City of Philadelphia DHS will be dismissed.

IV. CONCLUSION

The Plaintiffs have probably not even alleged constitutional violations against the Defendants. In any case, they certainly have not produced evidence to support a reasonable jury's finding that Defendants violated Plaintiffs rights to substantive due process and equal protection under the Fourteenth Amendment. Therefore, summary judgment will be entered in favor of the Defendants and against the Plaintiffs.

An appropriate Order follows.

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O R D E R

AND NOW, this 28th day of August, 2000, upon consideration of the Plaintiffs' Motion for Summary Judgment (Docket No.26) and the remaining Defendants Cross-Motion for Summary Judgment (Docket No. 32); it is hereby **ORDERED** that the Defendants' Motion is **GRANTED** and the Plaintiffs' Motion is **DENIED.** Judgment is entered in favor of all Defendants and against the Plaintiffs.

This case may be marked as Closed.

BY THE COURT:

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RONALD L. BUCKWALTER, J.